



Office of Congresswoman Mary Jo Kilroy

1237 Longworth House Office Building • Washington, DC 20515

UNDERSTANDING EMPLOYER RESPONSIBILITY PAYMENTS

Below is a summary of the employer responsibility payment provisions in health care reform. The Administration estimates that 96 percent of businesses (i.e., all those under 50 full-time equivalents) are entirely exempt from the employer responsibility requirements under the newly enacted law.

This summary reflects the policy of both the Senate and reconciliation bill. Please note that these provisions will not take effect until 2014, and some policy details will be developed by the Administration through the normal regulatory process, with public notice and comment.

FIRST RULE: AN EMPLOYER UNDER 50 FULL TIME EQUIVALENTS HAS NO RESPONSIBILITY REQUIREMENTS.

Their employees may get coverage in the exchange and apply for tax credits.

SECOND RULE: IF EMPLOYER DOES NOT OFFER HEALTH CARE COVERAGE AND AT LEAST ONE FULL-TIME EMPLOYEE RECEIVES TAX CREDITS IN THE EXCHANGE

If a large employer does not offer coverage AND at least one full-time employee obtains a tax credit for coverage in the Exchange during a calendar month, THEN the employer pays a penalty on every full-time employee for that month. The penalty is \$167 per full-time employee of the employer (however, an employer does not pay a penalty on the first 30 full time employees). This works out to an annual penalty of \$2,000 per worker, above the 30 employee threshold.

- **Who Is a Full-Time Employee?** Full-time employees are employees who work an average of 30 or more hours per week for a month.
- **Who Is a Large Employer?** A large employer is an employer with 50 or more full-time equivalent (FTEs) employees.
 - Small employers, those with less than 50 FTEs, pay nothing. As a result, 96 percent of businesses are entirely exempt.

Treatment of Seasonal or Part-Time Workers

- **Seasonal Workers**—You are not a large employer if you have a 4 month or less period during which your seasonal workers alone push you above the 50 employee threshold. However, a large employer (you have 50 or more non-seasonal FTEs) that also employs seasonal workers must pay an assessment on all of the full-time workers, both seasonal and non-seasonal. The assessment is a monthly payment so you only pay for the months the workers are employed.

- **Part-Timers/Full Time Equivalents**—Part-time workers are those that work less than 30 hours a week. An employer never has any obligation to pay for part-time workers. However, under the reconciliation bill, part-time workers are converted to FTEs for purposes of determining whether the employer is a large employer. For example, 2 part-time employees who work on average 15 hours per week = 1 FTE. Using FTEs in determining whether an employer is a large employer decreases the incentives employers might otherwise have to turn full-time workers into part-time workers.

THIRD RULE: IF EMPLOYER OFFERS COVERAGE BUT FULL-TIME EMPLOYEE(S) RECEIVE TAX CREDITS & COVERAGE IN THE EXCHANGE

If a large employer offers coverage AND a full-time employee obtains a tax credit for coverage in the Exchange during a calendar month, THEN the employer pays a penalty for that worker for that month

- **When Is Employee with An Employer Offer Eligible for Tax Credits in the Exchange?** The offer is unaffordable, meaning, the employer offers coverage that has an actuarial value (AV) that is less than 60% or the premiums exceed 9.5% of an employee's income.
- Employers who do not offer affordable coverage pay a \$250 per month penalty per full-time employee who receives a tax credit. This works out to an **annual penalty of \$3,000 for the individual worker**, (capped at an aggregate amount of \$2,000 per worker above 30 employees).

ADDITIONAL EMPLOYER RESPONSIBILITY RULES:

- **WAITING PERIODS** Employers may have health coverage waiting periods of no more than 90 days beginning in 2014. Employees will not be subject to the individual mandate during periods in which they were subject to an employer waiting period.
- **WHISTLEBLOWER PROTECTIONS** The bill contains whistleblower protections which among other things, protects employees from discrimination for the receipt of tax credits and subsidies in the Exchange.